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22 UNITED STATES DISTRICT COURT  
23 CENTRAL DISTRICT OF CALIFORNIA

24 CYBERSitter, LLC, a California  
25 limited liability company d/b/a Solid  
26 Oak Software,

27 Plaintiff,

28 vs.

1 The People's Republic of China, a  
2 foreign state; Zengzhou Jinhui  
3 Computer System Engineering Ltd., a  
4 Chinese corporation; Beijing Dazheng  
5 Human Language Technology  
6 Academy, Ltd., a Chinese  
7 corporation; Sony Corporation, a  
8 Japanese corporation; Lenovo Group  
9 Limited, a Chinese corporation;  
10 Toshiba corporation, a Japanese  
11 corporation; ACER Incorporated, a  
12 Taiwanese corporation; et al.,

13 Defendants.

No. CV 10-0038 JST (SHx)

**NOTICE OF MOTION AND  
MOTION OF DEFENDANT  
BEIJING DAZHENG HUMAN  
LANGUAGE TECHNOLOGY  
ACADEMY LTD. TO DISMISS  
PLAINTIFF'S COMPLAINT FOR  
LACK OF PERSONAL  
JURISDICTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION**

Date: July 18, 2011  
Time: 10:00 a.m.  
Place: Courtroom 10A

Honorable Josephine Staton Tucker

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Please take notice that on July 18, 2011 at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 10A of the above-entitled court, located at 411 West Fourth Street, Santa Ana, CA 92701, Defendant Beijing Dazheng Human Language Technology Academy Ltd. ("Dazheng") will and hereby does move the Court for an order dismissing Plaintiff's claims against Dazheng pursuant to Federal Rule of Civil Procedure 12(b)(2).

This Motion is made on the grounds that Dazheng has no connection with California that would subject Dazheng to personal jurisdiction in this Court, as articulated more fully in the accompanying memorandum of points and authorities.

This Motion is based on this notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Chen Xiaomeng, all papers and pleadings on file in the action; any reply papers; and any oral argument that the Court may entertain at the hearing on the motion.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on May 19, 2011.

DATED: June 8, 2011.

REED SMITH LLP

By /s/ Michael A. Garabed

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I.

**INTRODUCTION**

Defendant Beijing Dazheng Human Language Technology Academy Ltd. (“Dazheng”) is a Chinese corporation that does no business in California or the United States. Specifically, Dazheng has no offices or employees in California, is not registered to do business in California, and has never marketed any product – let alone the Green Dam Youth Escort computer program at issue in this lawsuit – to any California resident. Accordingly, Plaintiff’s claims against Dazheng should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2) because personal jurisdiction over Dazheng does not exist.

The mere allegation that Dazheng used Plaintiff’s intellectual property to create Green Dam Youth Escort is insufficient to create personal jurisdiction over Dazheng as a matter of law. In fact, because Green Dam Youth Escort was never intended for the California market and never marketed by Dazheng to anyone in California, neither general or specific jurisdiction over Dazheng exists in this Court. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997) (holding that a defendant cannot be subject to personal jurisdiction when there is “no evidence that any part of its business (let alone a continuous part of its business) was sought or achieved” in the forum state). To rule otherwise would violate all notions of fair play by requiring a foreign corporation that has never set foot in California to defend a lawsuit regarding a product that was never intended for use in California or marketed in this state.

In short, Plaintiff seeks to litigate claims against Dazheng relating to a software program that was not conceived, developed, marketed, or sold in the United States. Forcing Dazheng to litigate in California would therefore present barriers to evidence so excessive that Dazheng will likely be precluded from mounting a defense.

II.  
FACTS

Dazheng is a Chinese software developer with its offices and employees located entirely in China. [Declaration of Chen Xiaomeng (“Chen Decl.”) at ¶ 2.] Dazheng has no offices or employees in the United States and has never advertised or sold any product to any consumers or other end-users in the United States. [*Id.*] Specifically, Dazheng has no physical offices, bank accounts, telephone numbers, websites, servers, employees or registered agents in California or anywhere else in the United States. [*Id.*] Dazheng also does not have any subsidiaries that do business in the United States. [*Id.*]

In 2007, Dazheng participated in the bidding process for an Internet filtering program and was selected due to the capabilities of its preexisting Youth Escort software program. [*Id.* ¶ 12] Defendant Zhengzhou Jinhui Computer System Engineering Ltd. (“Jinhui”) also participated in the bidding process and was selected for the image processing technology of its Green Dam software. [*Id.*]

Following these successful bids, certain modules from Dazheng’s Youth Escort and certain modules from Jinhui’s Green Dam were integrated into one computer program. [*Id.* at ¶ 13.] The integration process took approximately 3-4 months and was completed in China around July 2009. [*Id.* at ¶ 14.] The post-integration product was called “Green Dam Youth Escort.” [*Id.*] Dazheng never marketed or sold this program to any consumers in the United States. [*Id.* at ¶ 22.] Specifically, Dazheng’s website is entirely in Chinese, intended solely for residents of China, and contains no advertisements or links targeting any consumers or other end-users in California or anywhere else in the United States. [*Id.*]

Among the numerous Dazheng engineers involved in the integration, Messrs. Cao Yanbin, Xiong Wen, Jin Yaohong, Miao Chuanjiang, and Wang Jingcheng are believed to be very knowledgeable about facts relevant to Dazheng’s



1 development and integration of the Dazheng software modules into Green Dam  
2 Youth Escort. [*Id.* at ¶ 16.] All of these individuals reside in China and none are  
3 proficient in English. [*Id.*] Dazheng has not yet had the opportunity to interview  
4 all of its employees involved in the integration process or all of the individuals  
5 involved in Dazheng's original development of Youth Escort. [*Id.*] Many of these  
6 engineers will be able to offer testimony supportive of Dazheng's defenses,  
7 including its independent development of Youth Escort. [*Id.*]

8           In addition to overseeing the original development of Youth Escort,  
9 Mr. Wang Jingcheng oversaw the integration of Dazheng's software modules into  
10 Green Dam Youth Escort and was involved in the bidding process that resulted in  
11 that program. [*Id.* at ¶ 17.] Mr. Wang is no longer employed by Dazheng and is  
12 unwilling to travel to the United States to participate in this case. [*Id.*] Because of  
13 the substantial turnover of Dazheng engineers during the development of Youth  
14 Escort, Mr. Wang is a particularly important witness for Dazheng, as he is the best  
15 and primary source of institutional knowledge concerning Youth Escort. [*Id.*] No  
16 one currently with Dazheng has as much knowledge as Mr. Wang about the  
17 development of Youth Escort and the integration of certain modules from that  
18 program into Green Dam Youth Escort. [*Id.*]

19           With respect to Dazheng engineers who are currently employed by  
20 Dazheng, even if it were possible for Dazheng to compel all of these witnesses to  
21 travel to the United States, the burden on Dazheng would be significant not only  
22 because of the cost involved in procuring air travel and visas for these witnesses  
23 (approximately \$5,000-\$7,000 for each witness for each trip), but also because the  
24 process required for a Chinese citizen to obtain a visa is time consuming and is not  
25 guaranteed to result in permission to travel to the United States. [*Id.* at ¶ 18.] The  
26 United State diplomatic mission in China is notorious for imposing burdensome  
27 restrictions on Chinese visa applicants and denying applications. [*Id.*] In addition,



1 of Dazheng's 78 current employees (including part time employees), 60 were  
2 involved in the Green Dam Youth Escort project. [*Id.*] If a substantial number of  
3 these witnesses were required to travel to the United States to testify in order to  
4 support Dazheng's defense, this would severely restrict and detrimentally affect  
5 Dazheng's ongoing business. [*Id.*]

6 All the documents relevant to Dazheng's defense are also located in  
7 China. [*Id.* at ¶ 19.] For instance, all of the documents relating to Dazheng's work  
8 on Youth Escort and integration work on Green Dam Youth Escort are located at  
9 Dazheng's offices in China, and are in the Chinese language. [*Id.*] These  
10 documents include, but are not limited to, plans for technical demonstration,  
11 technical development documents, code and data documents, software testing  
12 documents, work-progress reports, periodical work summaries, review/evaluation  
13 documents for software applications, software copyright prosecution documents,  
14 and minutes of meetings. [*Id.*] These documents are estimated to contain more  
15 than 4.5 million characters and except for code and data, are all written in Chinese.  
16 [*Id.*] In addition, all of the documents pertaining to Dazheng's contractual  
17 arrangements relating to Green Dam Youth Escort are located in China and are in  
18 the Chinese language. [*Id.*] The cost of translating these documents would be  
19 prohibitive. [*Id.* at ¶ 20.]  
20

### 21 III.

### 22 ARGUMENT

#### 23 A. Plaintiff Bears The Burden Of Demonstrating Personal 24 Jurisdiction Over Dazheng Exists

25  
26 Personal jurisdiction may be conferred as either general or specific  
27 jurisdiction. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414

(1984). General jurisdiction exists if a defendant has “continuous and systematic” contacts with the forum state that amount to a physical presence there. *Id.* at 416. Specific jurisdiction requires a showing that the non-resident purposefully established contacts with the forum state, that the plaintiff’s claims arise out of the defendant’s forum-related contacts, and the forum’s exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. *See Burger King v. Rudzewicz*, 471 U.S. 462, 476-78 (1985).

When a party seeks dismissal for lack of personal jurisdiction pursuant to Rule 12(b)(2), the party seeking to establish jurisdiction bears the burden of proof. *See Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007); *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006); *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). To meet this burden, “specific acts connecting defendant with the forum” must be established. *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1208 n.5 (9th Cir. 1980). In other words, the plaintiff must make a prima facie showing of jurisdictional facts by affidavits or otherwise and cannot “simply rest on the bare allegations of its complaint.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

**B. Dazheng Is Not Subject To General Jurisdiction Because It Does No Business In California Of Any Kind**

Courts may exercise general jurisdiction only if a defendant has substantial, continuous, and systematic contacts with the forum state that amount to a physical presence there. *See Helicopteros Nacionales*, 466 U.S. at 416. Factors relevant to this inquiry include whether the defendant sells products, solicits or engages in business, serves the state’s markets, designates an agent for service of process, holds a license, or has employees physically located in the state. *Id.* at 411; *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295

1 (1980). “The level of contact with the forum state necessary to establish general  
2 jurisdiction is quite high.” *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 380 (9th  
3 Cir. 1990), reversed on other grounds, 499 U.S. 585 (1991).

4 In this case, Dazheng has no substantial, continuous, or systematic  
5 contacts with California or any other part of the United States. Dazheng is a  
6 Chinese corporation with all of its offices and employees located in China. [Chen  
7 Decl. at ¶ 2.] Dazheng is not registered to do business in California, does not have  
8 a registered agent in California, and has no websites or servers located in California  
9 or anywhere else in the United States. [*Id.*] Moreover, Dazheng does not sell any  
10 products in California and had conducted no marketing activities in California of  
11 any kind.

12 Nevertheless, Plaintiff attempts to manufacture jurisdiction over  
13 Dazheng based on the conclusory allegation that Dazheng “has purposefully availed  
14 [itself] of the benefits of this forum” by “committing wrongful acts which have had  
15 direct effects in this District.” [Docket No. 56 (First Amended Complaint) at ¶ 10.]  
16 The evidence reveals, however, that Dazheng has never marketed any products in  
17 the United States, much less targeted the California market. [See Chen Decl. at ¶  
18 22.] Moreover, Plaintiff’s claim that Dazheng’s alleged conduct affects California  
19 simply because Plaintiff is located here cannot justify the Court’s exercise of  
20 jurisdiction over Dazheng as a matter of law. *See Cybersell, Inc. v. Cybersell, Inc.*,  
21 130 F.3d 414, 420 (9th Cir. 1997) (“Otherwise, every complaint arising out of  
22 alleged [intellectual property] infringement . . . would automatically result in  
23 personal jurisdiction wherever the plaintiff’s principal place of business is located.  
24 That would not comport with traditional notions of what qualifies as purposeful  
25 activity invoking the benefits and protections of the forum state.” ); *see also*  
26 *Freedman v. Peck*, 2010 WL 3749294, \*3 (C.D.Cal. 2010) (“Without individual  
27 targeting, mere knowledge that a plaintiff resides in the forum state is not

1 necessarily sufficient to confer jurisdiction, even if harm occurs in the forum  
2 state.”).

3  
4 **C. Dazheng Is Not Subject To Specific Jurisdiction**

5  
6 The Ninth Circuit has created a three-part test to determine specific  
7 jurisdiction: “(1) The nonresident defendant must do some act or consummate some  
8 transaction with the forum or perform some act by which he purposefully avails  
9 himself of the privilege of conducting activities in the forum, thereby invoking the  
10 benefits and protections of its laws; (2) the claim must be one which arises out of or  
11 results from the defendant’s forum-related activities; and (3) the exercise of  
12 jurisdiction must be reasonable.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*,  
13 223 F.3d 1082, 1086 (9th Cir. 2000).

14  
15 **1. Dazheng Did Not Purposely Avail Itself Of The Privilege Of**  
16 **Conducting Business In California**

17 To satisfy the first prong, the plaintiff must establish that the  
18 nonresident defendant purposefully directed its activities towards the forum state.  
19 *Pebble Beach*, 453 F.3d at 1155 (citing *Schwarzenegger*, 374 F.3d 797, 802 (9th  
20 Cir. 2004)). “A defendant has purposefully availed himself of the benefits of the  
21 forum if he has deliberately ‘engaged in significant activities within a state or has  
22 created ‘continuing obligations’ between himself and the residents of the forum.”  
23 *Gray & Co. v. Firstenberg Machinery Co., Inc.*, 913 F.2d 758, 760 (9th Cir. 1990)  
24 (quoting *Burger King*, 471 U.S. at 475-76).

25 Plaintiff cannot meet this threshold burden because Dazheng has never  
26 conducted business in California, let alone “purposely availed” itself of the  
27 protection of California’s laws. Dazheng never sold Green Dam Youth Escort in

1 California and did not market the program in the United States. [Chen Decl. at ¶  
2 22.] Accordingly, Dazheng's lack of physical presence in California, combined  
3 with the fact that Green Dam Youth Escort was intended solely for the Chinese  
4 market, makes the exercise of specific jurisdiction over Dazheng impossible in this  
5 case. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997)  
6 (holding a nonresident defendant that has not "deliberately directed its  
7 merchandising efforts" toward the forum state has not purposefully availed itself of  
8 the privilege of conducting business in the forum); *Amini Innovation Corp. v. JS*  
9 *Imports, Inc.*, 497 F.Supp.2d 1093, 1104 (C.D.Cal. 2007) (finding no purposeful  
10 availment because defendant "never completed any transactions . . . with California  
11 residents or anyone else").

12           Additionally, Dazheng did not encourage California residents to use  
13 Green Dam Youth Escort. To the contrary, Dazheng conducted no advertising in  
14 the United States because Green Dam Youth Escort was developed using China-  
15 specific historical, cultural and national standards. [Chen Decl. at ¶ 22.]  
16 Accordingly, the mere fact that a California resident might be able to access Green  
17 Dam Youth Escort from Dazheng's Chinese language website does not subject  
18 Dazheng to personal jurisdiction here. *See Cybersell, Inc. v. Cybersell, Inc.*, 130  
19 F.3d 414, 419 (9th Cir. 1997) ("While there is no question that anyone, anywhere  
20 could access [the defendant's] home page and thereby learn about the services  
21 offered, we cannot see how from that fact alone it can be inferred that [the  
22 defendant] deliberately directed its merchandising efforts toward [the forum  
23 state]."); *Life Alert Emergency Response, Inc. v. Lifealert Security, Inc.*, 2008 WL  
24 5412431, \*4 (C.D. Cal. 2008) ("The mere maintenance of an interactive website,  
25 without consummated commercial activity, is not sufficient to establish specific  
26 jurisdiction over [a] Defendant."); *Advanced Software, Inc. v. Datapharm, Inc.*,  
27 1998 WL 3515136, \*5 (C.D. Cal. 1998) (noting that if there is no showing that

1 “anyone in the forum state ever utilized the [defendant’s] web-site, the fact that it  
2 has interactive potential is irrelevant.”). For this reason alone, specific jurisdiction  
3 over Dazheng does not exist in this Court.

4  
5 **2. Dazheng’s Alleged Conduct Does Not Arise Out Of Or**  
6 **Relate To California**

7 The second prong of the specific jurisdiction test requires a showing  
8 that the claim arose out of the defendant’s forum-related activities. “A claim arises  
9 out of a defendant’s conduct if the claim would not have arisen ‘but for’ the  
10 defendant’s forum-related contacts.” *Silverlit Toys Manufactory, Ltd. v. Absolute*  
11 *Toy Marketing, Inc.*, 2007 WL521239, \*4 (N. D. Cal. 2007).

12 Here, the software at issue was created entirely in China for use solely  
13 in the Chinese market. [Chen Decl. at ¶ 22.] No copies were ever intended to be  
14 used in the United States. Moreover, Dazheng never set foot in California and has  
15 no other connection to this state. Accordingly, it is clear that Dazheng lacks any  
16 forum-related contacts related in any relevant way to Plaintiff’s claims. In fact,  
17 Plaintiff has implicitly conceded that Dazheng’s alleged conduct bears little  
18 connection to California because Plaintiff has sued Dazheng for alleged  
19 infringement of various foreign laws. [See Docket No. 56 (First Amended  
20 Complaint) at ¶¶ 89-124.] For this additional reason, specific jurisdiction over  
21 Dazheng does not exist.

22  
23 **3. The Exercise Of Jurisdiction Over Dazheng In California**  
24 **Would Not Be Reasonable Under The Circumstances**

25 Because Plaintiff cannot meet its burden to demonstrate that Dazheng  
26 “purposefully availed” itself of the privilege of conducting business in California  
27 and Dazheng’s alleged conduct would not have occurred “but for” its connection



1 with California, the Court need not determine whether the exercise of personal  
2 jurisdiction over Dazheng is reasonable in this case. Nevertheless, an examination  
3 of the factors relevant to that question reveals that forcing Dazheng to litigate in  
4 California would run contrary to traditional notions of fair play and substantial  
5 justice.<sup>1</sup>

6 As discussed above, Dazheng has no connection to California and  
7 therefore cannot be said to have “purposely injected” itself into this forum.  
8 Moreover, as set forth in detail in the supporting declaration of Chen Xiaomeng,  
9 forcing Dazheng to litigate in California would present insurmountable barriers to  
10 evidence that effectively would preclude Dazheng from mounting a defense.

11 For example, all of the engineers involved with Green Dam Youth  
12 Escort are Chinese citizens for whom travel to the United States would be difficult  
13 at best.<sup>2</sup> [Chen Decl. at ¶¶ 6-11.] Of these individuals, a particularly critical  
14 witness is Wang Jingcheng, who oversaw the integration of Dazheng’s software  
15 modules into Green Dam Youth Escort. [*Id.* at ¶ 17.] No one currently with  
16 Dazheng has as much knowledge as Mr. Wang about the development of Youth  
17 Escort and its integration into Green Dam Youth Escort. [*Id.*] Mr. Wang is no  
18 longer employed by Dazheng, however, and is unwilling to travel to the United  
19 States to participate in this case. [*Id.*]

20 In addition, all of the documents relating to Dazheng’s work on Youth  
21 Escort are located in China and are written in Chinese. [*Id.* at ¶ 19.] These  
22

23 <sup>1</sup> In evaluating whether specific jurisdiction is reasonable, relevant factors include: (1) the extent  
24 of defendant’s purposeful interjection into the forum state; (2) the burden on the defendant; (3)  
25 the plaintiff’s interest in convenient and effective relief; (4) the most efficient forum for  
26 judicial resolution of the dispute; (5) the forum state’s interest in adjudicating the dispute; and  
27 (6) the extent of the conflict with the sovereignty of the defendant’s state. *Panavision  
International, L.P. v. Teoppen*, 141 F.3d 1316, 1323 (9th Cir. 1998).

<sup>2</sup> In addition to cost of each trip (approximately \$5,000-\$7,000 per witness), the United States  
diplomatic mission in China is notorious for imposing burdensome restrictions on Chinese visa  
applicants and denying applications. [*Id.* at ¶ 18.]



1 documents include, but are not limited to, plans for technical demonstration,  
2 technical development documents, code and data documents, software testing  
3 documents, work-progress reports, periodical work summaries, review/evaluation  
4 documents for software applications, software copyright prosecution documents,  
5 and minutes of meetings. [*Id.*] These documents, which among other things  
6 demonstrate Dazheng's independent development of Youth Escort, are estimated to  
7 contain more than 4.5 million characters and are primarily written in Chinese. [*Id.*]  
8 The cost of translating these documents would be prohibitive.<sup>3</sup> [*Id.* at ¶ 19.] In  
9 addition, all of the documents pertaining to Dazheng's contractual arrangements  
10 regarding Green Dam Youth Escort are located in China and are in the Chinese  
11 language.

12           Given these facts, it is clear that the most appropriate forum for this  
13 dispute is China, not the United States. China is where Green Dam Youth Escort  
14 was conceived, developed, marketed, and used. China is where the bulk of the  
15 witnesses reside and where the physical evidence related to Plaintiff's claims are  
16 located. China is where Dazheng is indisputably subject to jurisdiction and where  
17 the Court has already found an adequate alternative forum exists. [*See* Docket No.  
18 88 (Order dated November 18, 2010) at 7-8.] And while California has an interest  
19 in protecting its citizens, that interest cannot support the exercise of jurisdiction in a  
20 case like this one where the alleged conduct occurs entirely outside the United  
21 States. *See Greenbrier Leasing Co., LLC v. Carroll*, 2006 WL 1643522, \*3 (D.Or.  
22 2006) ("Oregon's interest in protecting its citizens weighs in favor of Plaintiff but is  
23 not sufficient to overcome the lack of Defendants' actions in the state.").

24  
25  
26 <sup>3</sup> Dazheng estimates that it has more than 10 terabytes of digital files and at least 30,000 pages  
27 of documents relevant to this case. [Chen Decl. at ¶ 20.] Based on a translation cost of  
approximately 0.2 dollars per Chinese word, it would likely cost hundreds of thousands of  
dollars to translate this information into English. [*Id.*]

1 In short, forcing Dazheng to litigate in California will likely prevent  
2 Dazheng from mounting a defense. Accordingly, asserting personal jurisdiction  
3 over Dazheng would not comport with traditional notions of fair play and  
4 substantial justice because it would amount to a deprivation of due process under  
5 the circumstances of this case.

6  
7 IV.

8 **CONCLUSION**

9 For the foregoing reasons, Dazheng respectfully requests that this  
10 Court dismiss Plaintiff's claims against Dazheng for lack of personal jurisdiction  
11 pursuant to Federal Rule of Civil Procedure 12(b)(2).  
12

13 DATED: June 8, 2011.

REED SMITH LLP

14  
15 By /s/ Michael A. Garabed

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